IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHASE J. BAKER,

Defendant.

Case No:5:19-PO-00413-MLC-1

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

This matter comes before the Court on Defendant's Motion to Suppress for Lack of Particularized Suspicion [Doc. 10] regarding all evidence gathered during a vehicle stop after Defendant was reportedly seen collecting antler sheds in Yellowstone National Park on June 15, 2019. The motion was heard in conjunction with the bench trial held on August 7, 2019. For the reasons set forth below the Defendant's motion is **DENIED**.

FACTS

For purposes of this motion the facts were not contested and most of the relevant contact and conversations were recorded by the ranger's body cam. On June 15, 2019 Ranger Youker was advised by dispatch of a report regarding a male possibly collecting antlers in Yellowstone National Park ("the Park"). She met with the reporting parties who reported that they had used binoculars to view the man carrying something that looked like antlers in his hands as he walked down into a ravine before he walked up to a ridge—

arriving with nothing in his hands except bear spray. The reporting parties had a picture of the man who was allegedly antler collecting and a picture of the vehicle the man was driving. The vehicle was a white Toyota Tundra. The reporting parties also showed Ranger Youker where the man appeared to have stashed the antlers before returning to his vehicle with only bear spray in his hands.

After speaking with the reporting parties, Ranger Youker observed the Toyota Tundra coming up from the direction of Slough Creek Campground. The vehicle was being driven by a man, Defendant Baker, who matched the reporting parties' description. Ranger Youker initiated a vehicle stop, at which point she advised Defendant that she had heard from reporting parties that they believed he had stashed antlers. She asked Defendant how many antlers he had in the back of the vehicle and he admitted that he had antlers. Defendant claimed the antlers had come from Paradise Valley. However, when asked whether he had a permit to transport the antlers through the Park, Defendant admitted he did not have a permit. Defendant also admitted that he had collected other antlers within the Park and stated he could show Ranger Youker where the other antlers were stashed. After these admissions, a need to move the vehicles off the road arose and Defendant suggested they do so. Ranger Youker asked that Defendant "please don't drive off on me" before he pulled the vehicle forward and into a pullout.

After Defendant admitted to having antlers in the car with no permit to transport them through the Park, Ranger Youker advised that he was in violation of possessing antlers within the Park without a permit. She conducted a probable cause search of his vehicle and located seven antler sheds under a blanket behind the front driver's seat.

Ranger Youker advised that she would be temporarily taking the antler sheds that were in his vehicle as evidence. Ranger Youker also advised Defendant that she would issue him a mandatory appearance citation for violation of 36 C.F.R. § 2.1(a)(1)(i). The initiated stop and subsequent search all happened in public where passersby could, and did, see what was occurring.

After Ranger Youker issued Defendant his violation notice, Defendant agreed to show Ranger Youker where the remaining antlers and bison skull were stashed, and they walked down near the area the reporting parties had pointed out prior to Ranger Youker's contact with Defendant. During the contact with Ranger Youker, Defendant stated that he used to sell antlers but no longer did so, and Defendant also explained the best way to go about collecting antlers. Defendant further admitted to taping the antlers he collected together before stashing them.

LAW AND DISCUSSION

Defendant asserts that his Fifth Amendment rights were violated when he was subjected to a custodial interrogation without being properly advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). The Defendant must present evidence or allegations which support a motion to suppress, and upon doing so, the burden shifts to the United States to prove a valid waiver of the constitutional privilege against self-incrimination. *United States v. Crocker*, 510 F.2d 1129, 1135 (10th Cir. 1975), *abrogated on other grounds by United States v. Bustillos-Munoz*, 235 F.3d 505 (10th Cir. 2000); *United States v. Fountain*, 776 F.2d 878, 886 (10th Cir. 1985); *United States v. Gilmore*, 945 F. Supp. 2d 1211, 1216 (D. Colo. 2013). The case law does not provide guidance as

to what the defendant must do to shift the burden to the government.[1] Defendant herein has argued and asserted facts to support his contention that he was subjected to a custodial interrogation, so the Court will find this is sufficient to shift the burden to the United States to show that the any statements were not obtained in violation of the Fifth Amendment.

Defendant argues that he was not advised of his rights against self-incrimination and that the stop by Ranger Youker extended beyond a *Terry* stop because Ranger Youker was armed, wearing a uniform for the Park, had her overhead lights activated, confronted Defendant with evidence of guilt of a crime, told Defendant not to drive off, kept him at the scene of the stop, and continued to question him. Consequently, Defendant filed a Motion to Suppress, claiming Ranger Youker's stop was a custodial interrogation and his rights were violated when there was a seizure of all evidence of the case with no *Miranda* warnings given. The government sought permission to enter nine exhibits, including (1) a photo of the man who was allegedly collecting antlers in the Park; (2) a photo of the vehicle the man allegedly collecting antlers was driving on the date in question; (3) a photo of the antlers and bison skull collected and/or in Defendant's possession at the time of the stop; (4) another photo of all antlers and the bison skull at issue; (5) a photo of the bison skull and the antlers Defendant admitted to taping together after collecting; (6) a close-up photo of the antlers Defendant admitted to taping together; (7) a close-up photo of the base of the antlers Defendant admitted to taping together—to indicate there are four separate antlers; (8) a photo of the seven antler sheds that were behind the drivers' seat of Defendant's

[1] *United States v. Gilmer*, 793 F. Supp. 1545, 1555 (D. Colo. 1992).

vehicle; and (9) the body cam footage from Ranger Youker's stop. Defendant seeks to suppress all nine of the government's exhibits, which were accepted pending the Motion to Suppress.

Defendant's primary arguments are that: (1) his Fifth Amendment rights were violated when *Miranda* warnings were not given during a law enforcement stop that went beyond the boundaries of a *Terry*[2] stop and entered the bounds of custodial interrogation and (2) Defendant's consent was not given before Ranger Youker searched his vehicle for evidence relating to the charged violation. In response, the United States contends that the stop was justified upon reasonable suspicion and the stop was not custodial interrogation. Further, the United States maintains that Ranger Youker's reasonable suspicion developed into probable cause during the noncustodial interrogation, which then authorized her to search Defendant's vehicle without his consent. Both of Defendant's arguments turn on the issue of whether Ranger Youker violated Defendant's Fifth Amendment rights against self-incrimination, therefore, the Court will begin analysis with the Fifth Amendment.

1. Defendant's Fifth Amendment Rights

Defendant does not argue that the initial stop was a violation of his Fourth Amendment rights, but only that the questioning resulting from the stop violated his Fifth Amendment rights when he was not given *Miranda* warnings. If the questioning was a violation of Defendant's Fifth Amendment rights, then evidence gathered as a result of the

[2] *Terry v. Ohio*, 392 U.S. 1 (1968).

answers Defendant gave during that questioning would be inadmissible under the exclusionary rule. *Miranda*, 384 U.S. at 479.

Courts have long held that the Fifth Amendment's privilege against self-incrimination "is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way." *Id.* at 467. Moreover, it is acknowledged that custodial interrogation of persons suspected of a crime "contains inherently compelling pressures" that will sometimes induce an individual to speak when he would not otherwise do so. *Id.* As such, when an individual is subject to custodial interrogation, certain procedural safeguards must be employed to protect the right against self-incrimination. *Id.* at 478–79. An individual in custodial interrogation:

> must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.

Id. Under the exclusionary rule, any evidence obtained as a result of a custodial interrogation where these procedural safeguards were not followed is barred as evidence in a prosecution. *Id.* at 479. Therefore, if Defendant was subjected to custodial interrogation by Ranger Youker during the vehicle stop without receiving *Miranda* advisements then the Court must suppress the evidence obtained from that interrogation. Defendant seeks to exclude all the exhibits admitted but does not explain how each exhibit

related to the alleged Fifth Amendment violations. The only items admitted into evidence which resulted from a search of Defendant's vehicle were the antlers which Defendant contended were not collected within the Park, but rather in the Paradise Valley region of Montana. The Defendant was not tried on any charges related to the possession of those antlers within the Park. The other exhibits, such as the photos taken by witnesses and the antlers and skull, were not attained during the search of Defendant's vehicle and the eye witnesses all testified that they could have directed the ranger to the location of the stashed items. Defendant does seek to suppress the incriminating statements made by him to the rangers.

Law enforcement officers "are not required to administer *Miranda* warnings to everyone they question." *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). Instead, courts must determine if the questioning rises to the level of rendering a person in custody. *Stansbury v. California*, 511 U.S. 318, 322 (1994). Determining whether a questioning is custodial is an objective test with two discrete inquiries that are essential to the determination: (1) what the circumstances were surrounding the interrogation and (2) given those circumstances, whether a reasonable person would have felt at liberty to terminate the interrogation and leave. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). A law enforcement officer's or defendant's subjective view is irrelevant. *Stansbury*, 511 U.S. at 323. Ultimately, law enforcement officers and courts must examine all the circumstances in coming to an objective determination. *Id.* To conclude that a questioning was custodial, the restraint on freedom must rise to a degree "associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983).

In the present case, Ranger Youker was not required to give Defendant *Miranda* warnings simply because she stopped him on the side of the road. Additionally, the subjective views of Ranger Youker and Defendant about what kind of stop this was are irrelevant to the present case. The issue revolves around whether the circumstances surrounding Ranger Youker's questioning rose to a level associated with a formal arrest. While Defendant subjectively maintains that he answered Ranger Youker's questions because he was "afraid of what was going to happen," that still does not mean this stop rose to the level of a formal arrest.

A law enforcement officer "who lacks probable cause, but whose 'observations lead him reasonably to suspect' that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to 'investigate the circumstances that provoke suspicion." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (quoting *United States v. Brignoni–Ponce*, 422 U.S. 873, 881 (1975)). This is known as an investigatory detention or a *Terry* stop. *United States v. Zimmerman*, 116 F. Supp. 3d 1280, 1286 (D. Wyo. 2015). The officer may detain the suspect to ask a moderate number of questions about his identity and "to try to obtain information confirming or dispelling the officer's suspicions." *Berkemer*, 468 U.S. at 439. Inquiries during the stop must be reasonably related in scope to the reason for their initiation. *Id.* Because such inquisitions and brief detentions are nonthreatening in comparison to other custodial settings, courts have concluded that individuals temporarily detained for *Terry* stops are not "in custody" for *Miranda* purposes. *Id.* at 440.

Ranger Youker's stop falls within the realm of a *Terry* stop because Ranger Youker had reasonable suspicions that Defendant had been collecting antlers in the Park and that he might have antlers in his vehicle—a violation of the Park's regulations. The questions Ranger Youker asked Defendant were moderate in number and regarded his identity as well as information confirming her suspicions. Defendant himself almost instantly confirmed Ranger Youker's suspicions when she approached the vehicle. Ranger Youker did not tell Defendant he was under arrest or give him any reason to believe that this stop would be custodial for the purposes of *Miranda*. Moreover, in issuing Defendant a mandatory appearance notice, Ranger Youker definitively confirmed that Defendant was not under arrest.

One reason Defendant argues that the subject stop was more than a *Terry* stop is because Ranger Youker confronted him with evidence of guilt. Again, determining whether a stop rose to the level of custodial interrogation is an objective inquiry. *See Thompson*, 516 U.S. at 112. The extent that a defendant is confronted with evidence of guilt is a factor that weighs in favor of considering a stop custodial in the Ninth Circuit. *United States v. Kim*, 292 F.3d 969, 974 (9th Cir. 2002). While this factor has not been identified in any binding precedent, this Court is required to consider the totality of the circumstances in assessing custodial status. *United States v. Jones*, 523 F.3d. 1235, 1240 (10th Cir. 2008). In this matter, Ranger Youker stated an upfront belief that Defendant had been collecting antlers and she asked Defendant how many antlers he had in his vehicle. In doing so Ranger Youker defined the nature and the basis for the contact. This is not unlike a traffic stop where the law enforcement officer advises the motorist of the reason

for the stop, such as excessive speed or other observed improper driving. The factor is not determinative in this matter.

Defendant also argues that this questioning exceeded the bounds of a *Terry* stop because Ranger Youker was wearing a park ranger uniform and had her overhead lights activated. These arguments are also comparable to traffic stops in which a citizen is contacted by law enforcement officers in uniform and stopped with the use of "overhead lights." Traffic stops are viewed as analogous to *Terry* stops and are not typically considered custodial interrogation for *Miranda* purposes. *Berkemer*, 468 U.S. at 439. Although freedom to leave the scene is terminated in a traffic stop, the offender is generally not told they will be taken into custody. *Id.* at 423. Even though stopping and detaining the vehicle does constitute a seizure pursuant to the Fourth Amendment, there are two mitigating reasons why *Miranda* warnings are usually not required. *Berkemer*, 468 U.S. at 436–37. First, a motorists' detention is "presumptively temporary and brief"—these are the motorist's expectations when he sees the lights flashing. *Id.* at 437. Second, the "circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police." *Id.* at 438. Although an officer is armed and uniformed, the stop is also public and less "police dominated." *Id.* at 438–39.

While Ranger Youker was wearing her park ranger uniform and had her overhead lights activated, this does not make her stop custodial. If it did, almost all *Terry* detentions would become custodial, which is clearly not the law. Routine traffic stops require overhead lights and are conducted by armed, uniformed officers yet do not necessitate *Miranda* warnings. What is significant is that this contact, like a traffic stop, was conducted

in a public place. In fact, the Defendant and Ranger Youker had to relocate their vehicles because they were interfering with public traffic. Therefore, the facts are analogous to a routine traffic stop, which is typically non-custodial in nature.

Defendant further maintains that even a routine traffic stop can become custodial. True, "if a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him 'in custody' for practical purposes, he is entitled to the full panoply of protections prescribed by *Miranda*." *Id.* at 421. The discrepancy between an ordinary traffic stop and a detention where coercion is present is not distinct, but courts must still consider whether that detention rose to the level of a formal arrest. *United States v. Revels*, 510 F.3d 1269, 1272–75 (10th Cir. 2007). Three helpful considerations include (1) whether circumstances demonstrated a police-dominated atmosphere; (2) whether the nature and length of the officers' questioning was accusatory or coercive; and (3) whether police made the defendant aware that he was free to refrain from answering questions or free to otherwise end the interview. *Id.* at 1275.

Questioning can become custodial when law enforcement officers forcibly enter an individual's home, approach an individual with weapons drawn, restrain an individual in handcuffs, use physical force, or employ other highly intrusive actions. *Id.* at 1270; *United States v. Perdue*, 8 F.3d 1455, 1464–66 (10th Cir. 1993). Defendant's Motion points to cases from the Ninth Circuit referencing times when defendants were stopped by multiple officers, accused of dishonesty, pressured to be honest, physically restrained, or interrogated in a squad car—all of which are distinctly more extreme than the facts at issue here. *See United States v. Henley*, 984 F.2d 1040 (9th Cir. 1993); *United States v. Foster*,

No. 02-30148, 2003 WL 21480346 (9th Cir. June 23, 2003); *United States v. Cave*, No. CR 99-0492 JCS, 2001 WL 776947 (N.D. Cal. Mar. 22, 2001). Even where such facts exist, courts must still decide whether an encounter is custodial based on a totality of the circumstances. *Beheler*, 468 U.S. at 1125; *Revels*, 510 F.3d at 1275.

The questioning Defendant received hardly rises to the level of becoming a custodial interrogation under these considerations. First, the stop was no more police-dominated than typical *Terry* stops or traffic stops in the way Ranger Youker approached the situation and asked Defendant questions. Ranger Youker's explanation that she stopped him due to the information shared by reporting parties merely informed Defendant of the reason for the stop and the purpose for her questioning. Further, Defendant does not argue that Ranger Youker's questioning involved accusing him of dishonesty, physically restraining him, threatening him, stating that he was under arrest, or any other type of action resembling a formal arrest. The entire event was defined by a polite and cooperative conversation between the Defendant and Ranger Youker. Under the totality of the circumstances, the Court cannot conclude this stop became custodial.

Defendant asserts that Ranger Youker's request for Defendant to not drive off while they were relocating their vehicles to avoid obstructing traffic raised the detention to custodial. Once again, this can be compared to a traffic stop. We all know that we are not free to drive off during a traffic stop, and having an officer tell us this does not make the stop custodial. It is simply a statement that the detention has not been concluded. Even if it could be said that Ranger Youker's stop became custodial when she asked Defendant not to drive off on her as they moved the vehicles forward into the road pullout, this event

occurred after Defendant admitted to collecting antlers in the Park and having antlers in the back of his vehicle. *Oregon v. Mathiason* evinces how, even if a questioning becomes custodial at some point during an encounter, the evidence collected prior to *Miranda* warnings when the questioning was non-custodial is admissible. *Mathiason*, 429 U.S. at 493–94. The confession that occurred within five minutes of Mathiason entering a police station for an investigatory interview was admissible even though *Miranda* warnings were not administered until after his admission.

Under the totality of the circumstances and for the reasons stated herein, the Court finds that this stop was non-custodial in nature and did not require Ranger Youker to give *Miranda* advisements to Defendant. The evidence obtained during the questioning and as a result of the questioning is admissible.

2. Defendant's Fourth Amendment Rights

Defendant's arguments regarding his Fourth Amendment rights are somewhat confusing insofar as he does not argue that the initial investigatory detention was a violation of his Fourth Amendment rights. Rather, the only apparent issue Defendant raises is that there was an illegal seizure of evidence when Ranger Youker searched his vehicle without a warrant or consent. Yet, the only evidence that was obtained from the vehicle search is that of the antlers allegedly collected in Paradise Valley that Defendant was transporting without a permit, for which Defendant received no violation notice. Nevertheless, the Court will address Defendant's argument regarding the alleged Fourth Amendment violation.

The Fourth Amendment protects individuals against unlawful search and seizure, "wherever an individual may harbor a reasonable 'expectation of privacy.'" *Terry*, 392 U.S. at 9 (citing *Katz v. United States*, 389 U.S. 347, 351 (1967)). The Fourth Amendment does not guarantee against all seizures, but unreasonable and arbitrary searches and seizures are forbidden by the Constitution. *Schneckloth v. Bustamonte*, 412 U.S. 218, 241–42 (1973); *Elkins v. United States*, 364 U.S. 206, 222 (1960). Whenever practicable, law enforcement officers must obtain advance judicial approval and a warrant for search and seizures. *Terry*, 392 U.S. at 20. As will be discussed in greater depth below, there are times when a warrant can be excused. If the need for a warrant is not excused, however, then a warrantless search or seizure is deemed unconstitutional and the exclusionary rule is applied. *Id.* at 12–13. A defendant seeking to suppress evidence bears the burden of establishing that the initial detention violated his Fourth Amendment rights, and then the defendant must demonstrate a "factual nexus between the illegality and the challenged evidence." *U.S. v. Nava-Ramirez*, 210 F.3d 1128, 1131 (10th Cir. 2000) (quoting *United States v. Kandik*, 633 F.2d 1334, 1335 (9th Cir. 1980)). If the defendant makes these two showings, then the burden is upon the United States to establish compliance with the Fourth Amendment. *Id.*

To protect individuals' Fourth Amendment rights, the exclusionary rule excludes evidence seized in violation of the Fourth Amendment. *Terry*, 392 U.S. at 12. The exclusionary rule can govern seizures that do not rise to the level of arrest. *Id.* at 16. Thus, the exclusionary rule can apply to cases when a vehicle was illegally searched and evidence from that vehicle was then seized.

Some warrantless detentions and subsequent seizures are not considered a violation of the Fourth Amendment. As already noted, a law enforcement officer can initiate an investigatory detention "for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Id.* at 22. The detention must be justified at its inception, which requires that the officer "be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21. Courts then evaluate whether the officer's decision to detain the individual is reasonably related to the circumstances which initially justified the interference. *Id.* at 20. The officer need only have had reasonable suspicion to justify the investigatory detention, which means that the officer had a "particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417–18 (1981); *see also Zimmerman*, 116 F. Supp. 3d at 1286.

As Defendant argues, a warrant would typically be required to search a vehicle without consent. *Schneckloth*, 412 U.S. at 219 (explaining that one exception to a search without warrant or probable cause is a search conducted with consent). However, during an investigatory detention where reasonable suspicion ripens into probable cause there is no need for consent to search the vehicle. *See Ornelas v. United States*, 517 U.S. 690, 693 (1996); *see also Arizona v. Gant*, 556 U.S. 332, 346 (2009) (noting that when there is probable cause to believe a vehicle contains evidence of criminal activity then a search of any area of the vehicle in which evidence might be found is authorized). A search must still be "'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *Terry*, 392 U.S. at 19 (quoting *Warden v. Hayden*, 387 U.S. 294, 310 (1967)).

Nevertheless, if the stop was initially justified and the search was reasonably "related in scope to the circumstances which justified the interference in the first place" then neither consent nor warrant are necessary. *See id.* at 20.

In the present case, Ranger Youker briefly stopped Defendant's vehicle to investigate behavior related to collecting antlers in the Park. Ranger Youker had specific and articulable facts from the reporting parties regarding Defendant's alleged antler collecting. Those facts included a picture verifying that Defendant was the man the reporting parties had seen through binoculars carrying antlers and a picture verifying that the vehicle description of the man reportedly collecting antlers matched Defendant's vehicle. Ranger Youker's detention of Defendant was to verify and learn more about Defendant's illegal antler collecting activities and to ascertain whether there were antlers in his vehicle at that time. Based on these particularized and objective facts, Ranger Youker's initial investigatory detention met the requirements of a *Terry* stop and did not violate the Fourth Amendment. Subsequently, Ranger Youker's questioning of Defendant ripened her reasonable suspicion that Defendant was violating the Park's regulations into probable cause. The probable cause arose because Defendant admitted to collecting antlers, told Ranger Youker there were antlers in his vehicle, and even offered to show her where the rest of the antlers were stashed. Because the questioning that confirmed Ranger Youker's reasonable suspicions and created probable cause for a warrantless search without consent did not violate Defendant's Fifth Amendment rights, the evidence seized from the search is appropriate to admit even though Ranger Youker did not seek or obtain consent to search Defendant's vehicle.

CONCLUSION

IT IS THEREFORE ORDERED that:

Defendant's Fifth Amendment rights were not denied nor was Defendant subject to seizure violating the Fourth Amendment. Defendant's Motion to Suppress for Lack of Particularized Suspicion is DENIED.

Dated this 1st day of October, 2019.

MARK L. CARMAN
UNITED STATES MAGISTRATE JUDGE